IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

MONDAY, THE 10TH DECEMBER 2007 / 19TH AGRAHAYANA 1929

W.P(C).No. 36315 of 2007(W)

PETITIONER:

TAHIR A.P., S/O. MAMMU,
ANDIPATTIL HOUSE, PURANG P.O., VIA.KANHIRAMUKKU-679586, MALAPPURAM DISTRICT.

BY ADV. SRI.K.K.MOHAMED RAVUF

RESPONDENTS:
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1. **THE STATE OF KERALA,**
   REPRESENTED BY THE CHIEF SECRETARY,
   GOVERNMENT SECRETARIAT,
   THIRUVANANTHAPURAM.

2. **THE DISTRICT COLLECTOR, MALAPPURAM.**

3. **THE TAHSILDAR, PONNANI.**

4. **THE STATION HOUSE OFFICER,**
   PERUMPADAPPA POLICE STATION,
   PONNANI TALUK,
   MALAPPURAM DISTRICT.

BY GOVT. PLEADER, SRI.I.V. PRAMOD

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 10/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ANTONY DOMINIC, J.

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W.P.(C) No. 36315 OF 2007 - W

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Dated this the 10th day of December, 2007

J U D G M E N T

Proceedings issued by the 2nd respondent under Rule 27 of the Kerala Protection of River Banks and Regulation of Removal of Sand Rules, 2002 (Ext. P7) is under challenge.

2. The main contention that is raised is that there has not been any independent application of mind to the contentions raised by the petitioner that he is not guilty of the unauthorised transportation of river sand.

3. On going through the facts of the case, I am in agreement with the counsel for the petitioner. In the 2nd paragraph of Ext. P7 it is stated that on examination of the seizure mahazar it is found that the petitioner has violated Rule 29(8) of the Rules. The 2nd respondent is seem to have found the petitioner guilty and it is on that basis that the petitioner is ordered to pay value of the vehicle and fine.

4. Yet another ground urged by the counsel is that the decision reported in Moosa Koya v. State of Kerala {2005 (4) KLT 331} which is against the petitioner has been reversed by this Court in Abdul Samad v. State of Kerala {2007 (4) KLT 473}.

5. For these reasons Ext. P7 deserves to be set aside and I do so. The consequential order that is issued also is set aside.

6. The 2nd respondent shall issue notice to the petitioner for hearing and adverting to the contentions pass revised orders in the matter.

ANTONY DOMINIC
JUDGE

jan/-